

93 CSR 2

TITLE 93
PROCEDURAL RULE
WORKERS' COMPENSATION OFFICE OF JUDGES

SERIES 2
RULES ON TIME STANDARDS FOR THE
WORKERS' COMPENSATION OFFICE OF JUDGES

§ 93-2-1 General

1.1 Scope - These procedural rules shall govern the time periods within which contested claims before the Workers' Compensation Office of Judges shall be decided.

1.2 Authority - West Virginia Code §§23-5-8, 23-5-9, 29A-3-3.

1.3 Filing Date – January 27, 2004

1.4 Effective Date – July 1, 2004

1.5 Purpose - The purpose of this rule is to establish time standards for the processing of protests before the Workers' Compensation Office of Judges in order that the parties to such litigation may receive decisions without unreasonable delay.

1.6 These rules supersede those promulgated with an effective date August 1, 1999.

§93-2-2 Definitions

2.1 Acknowledgment of Protest - A written acknowledgment by the Office of Judges that a timely and proper objection to a decision of the Workers' Compensation Commission or self-insured employer has been filed with the Office of Judges.

2.2 Final Decision - Written decision by the Office of Judges which adjudicates a protest or protests and which is appealable to the Workers' Compensation Board of Review as provided by W.Va. Code §23-5-12 or any order which concludes litigation in any protest.

2.3 Protest - An objection to an order of the Workers' Compensation Commission or self-insured employer received by the Office of Judges and made pursuant to W.Va. Code §23-5-1 (b) by which an employer, claimant or dependent has expressed a desire to litigate the issue before the Workers' Compensation Office of Judges.

2.4 Submission - Date of receipt by the Office of Judges of a motion or date of receipt by the Office of Judges of response to a motion by opposing party.

2.5 Time Frame Order - An order scheduling the presentation of evidence by all parties to the litigation of a claim. A time frame order may be amended or extended by the Office of Judges at the request of one or more of the parties for good cause shown.

§93-2-3 Implementation of Rule

3.1 Applicability - These rules shall apply to protests filed on or after July 1, 2004, excluding protests on which an extension of the time frame was granted by the Office of Judges, or protests which were withdrawn by the party filing it. The percentage of final decisions that must be at or under the applicable time standards as provided in §93-2-6 of these rules is 80% by January 1, 2001.

3.2 Reporting - On September 1 of each year the Chief Administrative Law Judge shall file a report with the Governor, the Joint Legislative Committee on Government and Finance or such other committee as shall be designated by the President of the Senate and the Speaker of the House, and with the Workers' Compensation Board of Managers indicating the degree of compliance with these rules. Such report shall include, with respect to any area of non-compliance with these rules, the reasons for non-compliance together with a plan to secure compliance with these rules.

§93-2-4 Motions

All motions shall be acted upon by the Office of Judges within forty-five (45) days of the date of submission of said motion or on the date of the final decision, whichever is earlier. Any party may file a response to any motion but such response must be filed within 15 days from the date of receipt of said motion.

§93-2-5 Hearings

Other than final PTD hearings and OP Board hearings, all hearings will be scheduled by the Office of Judges within 60 days from the receipt of the request for hearing.

§93-2-6 Time Standards

6.1 Compensability – Except for those issues covered by §6.2, a final decision shall be issued in protests involving compensability issues within 6 months of the date of receipt of the protest by the Office of Judges.

6.2 Claims rejected by self-insured employer – A final decision shall be issued in claimant protests to compensability of claims rejected by self-insured employer, other than for occupational pneumoconiosis or hearing loss, within 4 months of the date of receipt of the protest by the Office of Judges.

6.3 Medical Treatment Authorization - A final decision shall be issued in protests by claimants involving medical treatment authorization issues within 4 months of the date of receipt of the protest by the Office of Judges. A final decision shall be issued in protests by employers involving medical treatment issues within 6 months of the date of receipt of the protest.

6.4 Rehabilitation - A final decision shall be issued in protests involving rehabilitation issues within 10 months of the date of receipt of the protests by the Office of Judges.

6.5 Temporary Total Disability - A final decision shall be issued in protests involving temporary total disability issues within 6 months of the date of receipt of the protest by the Office of Judges.

6.6 Dependents Benefits (104 Weeks) - A final decision shall be issued in protests involving dependents benefits issues within 4 months of the date of receipt of the protest by the Office of Judges.

6.7 Dependents Benefits (Fatal Claims) - A final decision shall be issued in protests involving such fatal claims within 12 months of the date of receipt of the protest by the Office of Judges. It is recognized that such cases often involve voluminous medical records and that such records often are difficult to obtain. Moreover, such cases often involve expert opinions that are dependent on the analysis of such medical records. Accordingly, in these more complex cases, motions to extend time frames will not be unreasonably denied.

6.8 Permanent Partial Disability - A final decision shall be issued in protests involving permanent partial disability, including protests to permanent partial disability awards in occupational pneumoconiosis cases, within 15 months of the date of the receipt of the protest by the Office of Judges.

6.9 Occupational Pneumoconiosis Non-Medical - A final decision shall be issued in protests involving OP non-medical issues within 9 months of the date of receipt of the protest by the Office of Judges.

6.10 Permanent Total Disability

6.10.1 Impairment Threshold - A final decision shall be issued in protests involving whether the claimant has a sufficient degree of medical impairment to be considered for a permanent total disability award within 8 months of the date of the receipt of the protest by the Office of Judges.

6.10.2 Permanent Total Disability Entitlement - A final decision shall be issued in protests involving whether a claimant should be granted or denied an award of permanent total disability within 15 months of the date of receipt of the protest by the Office of Judges.

6.10.3 Onset Date - A final decision shall be issued in protests involving the onset date in permanent total disability cases within 4 months of the date of receipt of the protest by the Office of Judges.

6.10.4 Second Injury Chargeability - A final decision shall be issued in protests involving whether or not a permanent total disability award is a second injury award within 4 months of the receipt of the protest by the Office of Judges.

6.10.5 Suspension/Termination – A final decision shall be issued in protests involving the suspension/termination of PTD benefits within 9 months of the receipt of the protest by the Office of Judges.

6.11 Reopening - A final decision shall be issued in protests involving reopening issues within 5 months of the date of receipt of the protest by the Office of Judges.

§93-2-7 Issuance of Decisions

The Office of Judges shall issue sixty percent (60%) of its decisions within thirty (30) days of the Order to Submit; eighty percent (80%) of its decisions within sixty (60) days of the Order to Submit; and one hundred percent (100%) of its decisions within ninety (90) days of the Order to Submit.

§93-2-8 Severability

If any provision of this rule or the application thereof to any entity or circumstances shall be held invalid, such invalidity shall not effect the provisions or the applications of this rule which can be given affect without the invalid provisions or applications and to this end the provision of this rule are declared to be severable.

Commentary

The time frames set forth herein recognize that there are different types of issues in Workers' Compensation litigation. Because of the nature of the issues and the complexity of the issues, it is appropriate to process certain issues more rapidly than others. For example, for obvious reasons, treatment issues should be resolved as rapidly as possible. Reopening issues, because they typically do not involve the necessity of additional evidentiary development, may be concluded expeditiously. On the other hand, permanent disability issues usually involve evidence from medical and other professional disciplines and more time is needed to properly develop those cases.

The rules attempt to balance the need for prompt resolution of disputes and the ability of the parties to appropriately develop the evidence needed for a reasoned decision. In addition the rules take into account the administrative time necessary to process and decide the protests. The vast majority of protests can be acknowledged and time framed within 30 days from receipt of the protest. After evidentiary development is completed, the Office of Judges must determine that the case is ready for decision and abstract the issues. The case is then ready for the decision making and the decision writing process. These activities ordinarily require 60 to 90 days after completion of the evidence by all parties.